

# OPINION

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## THE BLIND EYES OF CRIMINAL JUSTICE

K. F. RUSTAMJI

*Good men who love tranquility, who desire to abide by the laws and enjoy their benefits, who would gladly spill their blood in the defence of their country, seeing their property destroyed, their families insulted, and their lives endangered, their persons injured, and seeing nothing in prospect that forbodes a change for the better, become tired of and disgusted with a government that offers them no protection.*

*Abraham Lincoln*

The blinding of some persons in Bihar is so utterly wrong and so utterly despicable that it is the very antithesis of good policing. And the irony of it is that such excesses are often committed under the mistaken zeal of protecting society, because the law as it stands today does not provide a complete answer to the problem of crime and criminals in our country.

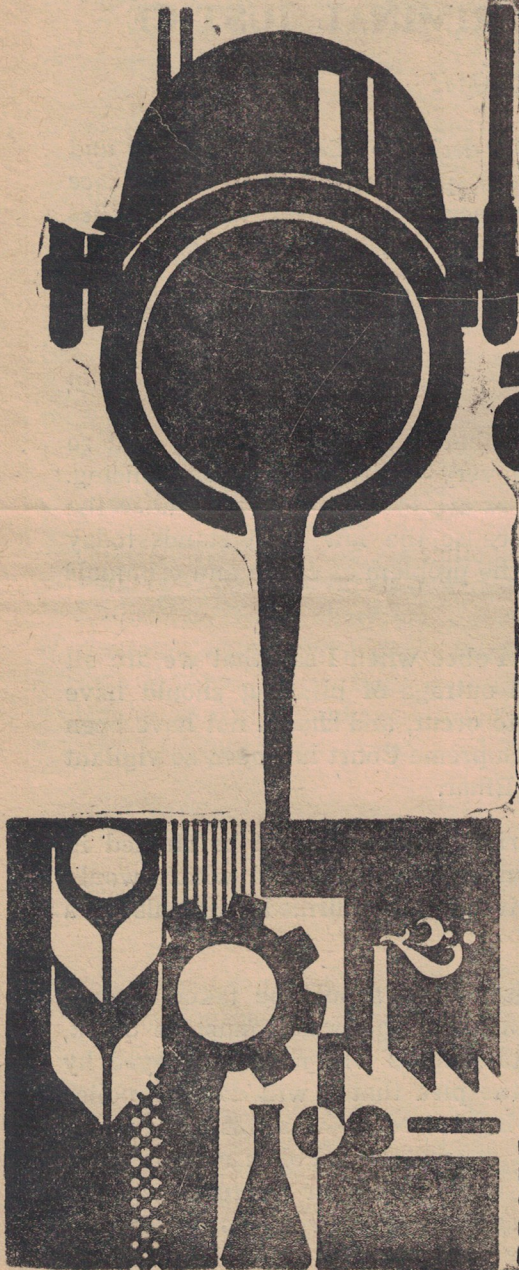
I reflect the feelings of the Indian Police when I say that we are all feeling a sense of deep guilt that the outrage of blinding should have occurred, or should have been allowed to occur, and should not have been exposed at once, particularly when the Supreme Court has been so vigilant about the condition of undertrials in Bihar.

And I hope that the problem of crime prevention will be studied in all its aspects, and laws and procedures will be devised which would make it possible to control the activities of confirmed criminals of a dangerous type in a lawful manner.

I think the first question is: what action should be taken against those who have perpetrated this outrage? The action must be quick, comprehensive, and must not be left to persons who may be swayed by purely parochial considerations or on the plea that it will damage police morale. The only doubt that needs to be cleared is—was this done under orders from a superior functionary of government. Police rank and file must not be victimized for someone's crazy policy or instructions. The whole country must feel that action has been taken which is correct and completely impartial. This is also very important for the police, because we have got to prove that whatever mistakes were committed by a



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group of policemen, have been dealt with firmly and without fear or favour.

Secondly, we should take a very careful look at why this sort of thing has happened. We may say that it is an isolated instance of crime by a small group, but the fact is that we have been allowing policing to slide downward over the whole country in one way or the other. It begins with small irregularities or illegalities; you arrest a man, and you do not show the arrest in the registers, you do not inform the court, you keep the man in illegal detention or waiting for months without trial, you do not file the challan in time. You pad evidence, register false cases, or make non-cognizable cases cognizable. You harass, intimidate and beat up people because you think it is a deterrent to crime. You do not consider the distress that is being caused to him or his family. You use handcuffs in an unauthorised way, parade offenders in the streets with boards. I saw a man being paraded in handcuffs in Jhansi with a board on his chest "I am a SATORIYA" (Satta gambler). You keep on trying to control crime by methods which are illegal and quite contrary to the precepts of good policing. It is true that there is some fear created in criminals, but you arouse serious antagonism and fear in the public mind too; and all the information which you can get from the public gets dried up at the source. Even crime is not checked. On the other hand detections drop because public support ceases.


One very important reason why the police in India is going wrong is that all over we tend to apply the wrong tests to policing, and the wrong pressures on policemen. "You are useless, corrupt, inefficient", we say to the Superintendent of Police, "if you do not put a stop to crime at once." We fail to understand that crime is caused by numerous factors, mainly economic, social and psychological, over which the policeman has no control.

The main question that we have to ask is why do such police excesses as blinding of suspected criminals occur. Blinding is a new form of atrocity, but the other forms such as killing suspected dacoits or members of gangs has been practised in a clandestine manner in several States. What are the reasons for this type of behaviour?

It would be too simplistic to say that this shows criminal tendencies in the police. If anything it shows that society is making scapegoats of them after putting pressure on them to control crime by any methods, foul or fair.

We inherited a system of criminal justice from the British which although it had several faults was still workable. The decision in a murder case took about a year or so. Arrears in courts were mounting but not threatening to clog the system completely. Most of all the common man had faith in the system. Today courts are so jammed with cases, there





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are so many appeal upon appeals, and delays according to the lawyer's choice, that a rich man can get away with anything, and even a man who rapes and strangles a child, and has been sentenced to death, can hope to live for atleast 5 to 7 years, and even more in some States. When the people see such delays in justice, their faith in the whole system gets so weakened that they hark back to the days when elephants crunched criminals under their feet the day after the crime, or they were buried alive, or decapitated the day the victim tolled the bell for justice.

Primitive methods of inflicting punishment seem the only way because conditions of law and order in States like Bihar have made life extremely difficult for millions of people in some areas. You find the same crime conditions in parts of Uttar Pradesh, where again the people clamour for instant punishment, and faked dacoit encounters are accepted as part of the normal pattern of crime prevention, with popular approval in the villages.

During the fight for independence we fought every measure which would make law enforcement stronger. This tradition has been followed ever since Independence. We have forced the police to use illegal methods, and then used that for denying them adequate powers, on the ground that they were undependable.

Faith in the law as a deterrent to crime and disorder exists only in the form of a thin veneer over the administration. In the British days, the normal processes of the law were quickly set aside when any serious danger to the Raj arose. But it must be said to his credit that the Englishman used special powers reluctantly, except in 1942, when he resorted to extra legal methods with impunity. For the north-west and north-east regions, the whole system of punishment was different and consisted of burning down tribal villages and dealing severely with any unrest. After Independence, we have found it almost impossible to strengthen the law. Even the power of detention of criminals, against whom prosecution is not possible because witnesses would be killed, has only been given at uncertain intervals. Every attempt to give more powers to the police which would enable them to function effectively has been suppressed either by secretariat or legislature. Consequently, as a nation, we have come to depend on the gun and the 'lathi', whenever we are hard pressed by disorder. If communal trouble becomes serious, we issue a 'shoot at sight' order. Nobody ever dreams of dealing with communal trouble by prosecuting cases and sending the culprits to jail. Has anybody ever been sentenced for the most brutal mass killings in communal riots? If an insurgency group or a dacoit gang kills a large number of persons in an area, orders are issued that the gang members should be shot, if captured. Sometimes we have created impossible situations for the police. One government orders them to shoot suspects, and its successor government reverses the order, and as a result all policemen who carried out the order of the preceding government are prosecuted for murder.



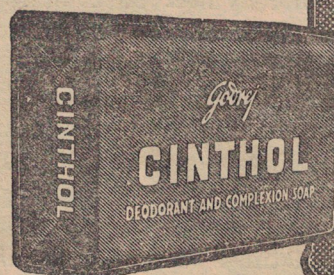


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The tragic fact is that harsh and illegal methods do not always prove to be a failure in crime control. Question a successful civilian or police officer and he will grudgingly concede that certain types of crimes are difficult to eradicate by strictly legal methods. He will cite numerous examples of success in dealing with serious crime by unorthodox methods. Some of the prominent instances are eradication of dacoity in parts of Punjab and Rajasthan by shooting suspected dacoits. (The fact that other factors such as irrigation played an important part is forgotten.) What I wish to emphasise is that the best of officers have a concealed faith in quick and condign punishment where prosecution or conviction in court is not possible. They mention the eradication of 'thuggee'—the most notable police work done in India—by Capt. William Sleeman, as an example. Were the methods used by Sleeman strictly legal? Yes, according to the law of the times they were. He was investigator, prosecutor, judge and hangman—duly authorised by law. But would that have been considered legal today?

This sneaking faith in rough and ready justice is kept in check in the best officers by their own conscience and altruism and sense of judgment. But the worst officers, either because they are hell-bent on promotion or completely ignorant, do not even conceal their reliance on improper method. They say quite openly these days that crime is so heavy that unless criminals are given short shrift they cannot control crime otherwise.

That is the truth. We may not like to face it because our whole legal system is based on hypocrisy, fraud and legal disputation. In keeping justice pure, we have made the awful concession that the law will only be used to appear legal. We have gone to the length of framing laws for the country which are meant only for a totally different idealised, highly-stable country, where crime and disorder are negligible, and there is peace and satisfaction in every heart. Not one person who frames laws—bureaucrat, politician or judge—has the slightest responsibility for crime control. He lives in an ivory tower so distant that the shrieks of the wounded and dying victims of crime never reach him. Then when things go out of control these framers of the law keep absolutely silent and pass the buck to the police. The police are told to get rid of the menace at all cost. When an improvement is brought about by harsh measures, they appear again on the stage to question the methods used by the police.

Our criminal justice system is just as caste-ridden as our country. The only difference is that we call each person by profession—policeman, judge, jailor, lawyer and MLA/MP. The lawyer's motivation is based entirely on a mixture of impartial justice and client's fees for an acquittal. The policeman's idealism is based on a crime-free district, and an existence free of instant transfer. The MLA/MP wants the sort of law that can be broken with impunity. The judge wants to appear thoroughly impartial to the accused and his lawyer. The one important constituent of the system who matter—the victims of crime—are totally unrepresented in the process



of law-making. Again and again we show sympathy for dacoits, none for their victims; mainly women who have seen atrocious atrocities being committed in front of their eyes. In Morena one dacoit gang lined up ten young boys from the village and shot them before the whole village because they suspected the village was harbouring an informer. The way in which we make laws, and the way we enforce them, is so wrong that we are not far from the day when the people will demand their own courts, or raise their own firing squads and shoot whoever they think is an enemy.

Today it is blindings in Bihar that is a cause of concern to us on compassionate grounds. Let me repeat they are despicable. But let me also say quite clearly that the way the situation is developing, a serious break-down of law and order is possible, unless we take corrective measures; and if we fail, we will go step by step downwards to the firing squad.

[ If using the Indian Penal Code, the Criminal Procedure Code and the Indian Evidence Act, crime could be held in check and even reduced in notoriously criminal sub-divisions in the twenties and thirties of this century, why cannot it be done now? For the simple reason that integrity has disappeared from the highest rung of authority in the country. The honest minister, the honest legislator, the decider on merits alone, the man in power who will not interfere with law enforcement whatever the pressures upon him or the profit to him from so interfering,—these are almost as scarce as the great Indian bustard. Sophisters, calculators, worshippers of corruption in all its various forms have taken their places. As the Ministers and the legislators, so the administrators and the policemen to a greater or lesser degree, depending on the individual, his breeding and training. While therefore there is great validity in what the article above says, ultimately a clean and efficient administration, whatever the branch of work, Police, finance, irrigation etc., can only come if authority at the top is honest and patently above board. If in addition it is knowledgeable, so much the better.—Ed. ]

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